

THE ACLU'S "MENTAL ILLNESS" COP-OUT

Thomas S. Szasz

REASON is pleased to present an important new article by Dr. Thomas S. Szasz, one of America's most forthright advocates of individual liberty. During most of the 1960s Dr. Szasz was the lone voice speaking out in defense of the individual against the oppression of what is now becoming known as the "Therapeutic State." Beginning with his book *THE MYTH OF MENTAL ILLNESS* in 1961, Szasz advanced the controversial view that what is commonly called mental illness is merely conduct which the majority finds distasteful and wishes to suppress. Szasz argued that bizarre conduct, so long as it does not interfere with the rights of others, is no grounds for restricting a person's liberty. From there he proceeded to catalogue the abuses of State psychiatry in such books as *LAW, LIBERTY, AND PSYCHIATRY*; *PSYCHIATRIC JUSTICE*; and *THE MANUFACTURE OF MADNESS*. One of the most important civil liberties issues involved in "mental health" cases is the State's unlimited power to commit people, involuntarily, to institutions. Yet a jail is still a jail, argues Szasz, even if it is called a "mental hospital" and the guards are called "staff." It is on this vital issue that Dr. Szasz here takes the American Civil Liberties Union to task.

George Orwell's *ANIMAL FARM* was rejected by four publishers, mainly because it made Stalin look bad. Since the watchword among modern liberals, especially in Europe, had long been "*Pas d'ennemis agache*" ("There are no enemies on the left"), this was simply not done. In a hitherto unpublished preface to *ANIMAL FARM*, Orwell flailed against this hypocrisy, and concluded with this ringing denunciation: "... it is the liberals who fear liberty and the intellectuals who want to do dirt on the intellect: it is to draw attention to that fact that I have written this preface." [1]

Orwell's criticism was directed against England, not the United States, where the situation is, indeed, somewhat different, especially today. Although liberals here too see the mote on the right through a microscope and the beam on the left through inverted opera glasses, the object of their greatest hypocrisy is not Communism but Psychiatry. Thus, civil libertarians, and especially the ACLU, refuse to confront the attack upon liberty by institutional psychiatry, and hence cannot take a clear stand against it. The upshot is that they hedge and fudge and, in the end, come down squarely against liberty and for psychiatry.

My purpose here is to present a brief history of the American Civil Liberties Union's betrayal of civil liberties. This betrayal is prompted,

in my opinion, by a stubborn effort to avoid direct confrontation and conflict with the psychiatric ideology and industry.

THE COP-OUT

During the first few decades of its existence, the ACLU took no notice of psychiatry and involuntary mental hospitalization. Once it did, however, it was love at first sight: the Union's immediate response to psychiatric incarceration was to embrace it as a heaven-sent—nay, science-sent—answer to the problem of social deviance and social control.

In his official history of the ACLU, Charles Markmann relates, with unconcealed pride, how, toward the end of the Second World War, "The Union ... began to draft model statutes for the commitment of the insane. ... Twenty years after the first Union draft of a model bill for commitments to mental hospitals, Congress enacted for the District of Columbia a law closely following the Union's proposals." [2]

In short, the Union has a fairly long and unqualifiedly disastrous history of uncritically accepting the concept of "mental illness," whose "treatment," by imprisonment, is then casually delegated to the psychiatric profession.

There were, of course, many reasons for this cop-out then, and why it continues, in attenuated form, now. The popularity and scientific legitimacy of psychiatric principles and practices is one. The lure of a paternalistic approach to troublemakers, which sees the psychiatric as against the penological approach to law enforcement as "humane" and "progressive," is another. The third, the one to which I want to call attention here, is more personal. We know, after all, that organizations do not move by themselves. They are moved, this way or that, by individuals who have strong convictions and the will to see their convictions prevail. Two persons who meet these criteria are Dr. Karl Menninger and Mr. Ramsey Clark. These men are not merely defenders, but enthusiastic advocates, of involuntary mental hospitalization. Dr. Menninger has long been, and Mr. Clark now is, prominent in the ACLU. Their established positions on commitment, and the historic position of the ACLU on this issue, are, however, now coming into ever sharper conflict with the opinion of those members of the Union who are no longer afraid to recognize psychiatry's threat to civil liberties.

MENNINGER'S VIEWS

Dr. Karl Menninger is generally recognized as the professionally most respected and politically most influential psychiatrist of our time. He is a founder of the famed Menninger Clinic and Foundation, a former president of the American Psychoanalytic Association, the recipient of countless psychiatric awards and honors—and he has long been a Vice-Chairman of the National Committee of the ACLU.



I summarize below, in the form of paradigmatic citations, Menninger's views on mental illness, crime, justice, and involuntary mental hospitalization.

We insist that there are conditions best described as mental illness. . . . All people have mental illness of different degrees at different times, and sometimes some are much worse, or better.[3]

From the standpoint of the psychiatrist, both homosexuality and prostitution—and add to this the use of prostitutes—constitute evidence of immature sexuality and either arrested psychological development or regression. Whatever it may be called by the public, there is no question in the minds of psychiatrists regarding the abnormality of such behavior.[4]

The very word *justice* irritates scientists. No surgeon expects to be asked if an operation for cancer is just or not. . . . Behavioral scientists regard it as equally absurd to invoke the question of justice in deciding what to do with a woman who cannot resist her propensity to shoplift, or with a man who cannot repress an impulse to assault somebody. This sort of

behavior has to be controlled; it has to be discouraged; it has to be *stopped*. This (to the scientist) is a matter of public safety and amicable co-existence, not of justice.[5]

Eliminating one offender who happens to get caught *weakens* public security by creating a false sense of diminished danger through a definite remedial measure. Actually, it does not remedy anything, and it bypasses completely the real and unsolved problem of *how to identify, detect, and detain potentially dangerous citizens*. [6]

[In a society properly informed by 'behavioral science',] indeterminate sentences will be taken for granted, and preoccupation with punishment as the penalty of the law would have yielded to a concern for the best measure to insure public safety, with rehabilitation of the offender if possible, and as economically as possible.[7]

When the community begins to look upon the expression of aggressive violence as the symptom of an illness or as indicative of illness, it will be because it believes doctors can do something to correct such a condition. At present, some better-informed individuals do believe and expect this.[8]

Do I believe there is effective treatment for offenders. . . .? *Most certainly and definitely I do*. Not all cases, to be sure. . . . Some provision has to be made for incurables—pending new knowledge—and these will include some offenders. But I believe the majority of them would prove to be curable. The willfulness and the viciousness of offenders are part of the thing for which they have to be treated. They must not thwart our therapeutic attitude. It is simply not true that most of them are 'fully aware' of what they are doing, nor is it true that they want no help from anyone, although some of them say so.[9]

Some mental patients must be detained for a time even against their wishes, and the same is true of offenders.[10]

As these passages show, Menninger divides social sanctions imposed on offenders or alleged offenders into two types: "punishments" administered with "hostile intentions," and "treatments" administered with "therapeutic intentions." The former are bad and should therefore be abolished; the latter are good and should therefore be used as widely as possible. Menninger thus urges that we abandon the legal and penological system with its limited and prescribed sanctions called "punishments," and replace it with a medical and therapeutic system with unlimited and discretionary sanctions called "treatments." In short, he proposes the destruction of law and justice—in the name of science and therapy.

In a recent article in *THE NEW YORK*

TIMES MAGAZINE entitled "A Model, Clockwork-Orange Prison," Phil Stanford reported on the Patuxent Institution in Maryland, an institution which combines the most repressive, anti-civil-liberties aspects of both prison and mental hospital—the sort of thing Dr. Karl Menninger has advocated throughout his entire professional life. Menninger knows Patuxent, and he knows what he likes. "Dr. Karl Menninger, perhaps the country's most honored psychiatrist, thinks Patuxent is a 'great idea,'" writes Stanford. "He [Menninger] says, 'It's the only one of its kind.... Patuxent is a progressive step forward.'"[11]

RAMSEY CLARK'S POSITION

The other prominent civil libertarian and a leading figure in the ACLU to whose views on psychiatry I wish to call attention is Ramsey Clark. Mr. Clark is a former Attorney General of the United States, and the Chairman of the National Advisory Council of the ACLU. I list below a few passages from his best-selling book, *CRIME IN AMERICA*, which illustrate his views on crime, mental illness, the indeterminate sentence, and involuntary mental hospitalization.

Most people who commit serious crimes have a mental health problem.[12]

Poor mental health, alcoholism and drug addiction are present in most crime.... It finally has become clear to the public that alcoholism is a health problem.... Drug addiction is an illness. Medical science can discover cures and provide care.... Drug users should be placed in correctional programs that cure and provide the opportunity to stay cured. The user's crime, until it causes him to commit other crimes, is against himself. When an individual is first found to be a user, criminal sanctions are neither necessary nor desirable. Where commitment is necessary, civil commitment of a contractual nature offers the opportunity for physical control over the addict without the stigma of a conviction for crime—and therefore the best chance for rehabilitation. Voluntary participation, which is the basis for civil commitment, creates an attitude helpful in achieving a cure.[13]

Punishment as an end in itself is itself a crime in our time. The crime of punishment, as Karl Menninger has shown through his works, is suffered by all society.... The use of prisons to punish only causes crime.[14]

If rehabilitation is the goal, only the indeterminate sentence will be used.... The sentence to a fixed term of years injures beyond its irrationality.... Indeterminate sentencing affords the public the protection of potentially long confinement without the necessity that

long sentences be served.... The day of the indeterminate sentence is coming.... If we release persons who have the capacity for further crime, only temporary safety has been afforded.[15]

Behavioral scientists can tell us how to condition violence from our personal capability. Psychiatry, psychology, anthropology, and sociology hold the key.... We can do this. It is more important than the ABM system to our personal safety.[16]

Malnutrition, brain damage, retardation, mental illness, high death rates, infant mortality, addiction, alcoholism—these are the principal causes of crime.[17]

In my opinion, these passages constitute some of the purest and most concentrated extracts of mistake, misinformation, and just plain bunk that the reader is likely to find in the literature on crime and mental illness! However, it does not really matter whether the reader agrees with me that these passages constitute Mr. Clark's genuflections before the altar of modern institutional psychiatry, or whether he regards them as true facts and sound judgments. What matters is that we recognize Mr. Clark's enthusiastic endorsement of involuntary psychiatric interventions, and especially involuntary mental hospitalization; that we face the fact of his unqualified support of indeterminate sentences as "rational" sanctions, and of his uncompromising opposition to fixed sentences as "irrational" sanctions; and that we not deceive ourselves about his utter neglect of the deprivations

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of civil liberties inherent in the kinds of confinements he advocates. In short, in a conflict between civil liberty and mental health, Mr. Clark comes down squarely on the side of mental health—that is, on the side of psychiatric totalitarianism.

ADDICTION

The ACLU's position on "alcoholism" and "drug addiction"—these terms being themselves misleading metaphors, implying that the self-determined uses of certain substances are, by their very nature, diseases requiring diagnosis and treatment by physicians!—is still another act in the drama of the Union's systematic sellout of liberty for "health."

When it first encountered alcoholism, the Union thought it had met the devil; however, it soon

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"recognized" that alcoholism was not really an "evil," but an "illness." "In the preoccupation with loftier matters that characterized its first decade," writes Markmann, "the ACLU hardly noticed the daily violations of civil liberties and law by which Prohibition was enforced. It has been suggested that in part this blind spot might well have arisen out of the fact that so many of the Union's early leaders were social workers, clergymen, and reformers to whom, at least in the abstract, Prohibition seemed genuinely desirable because of the manifold evils of drink." [18]

This is *justifying* the ACLU's position on Prohibition, not *explaining* it. It might be well to recall, in this connection, that while the ACLU tacitly supported Prohibition, many others—for example, that "arch-reactionary," H. L. Mencken—valiantly opposed it.

The Union's position on what it calls the problem of drug addiction—but what I think civil libertarians should call the **right to self-medication**—leaves one no option but to conclude that the ACLU has never been, and is not now, primarily concerned with civil liberties at all; but that it seeks instead, under the banner of civil liberties, to transform our relatively open society into one that is completely closed—that is, into a Therapeutic State.

A landmark decision regarding addiction, supported by one of the most admired civil libertarians in America, and hailed by the ACLU with unrestrained enthusiasm, is *Robinson v. California* (1962): The United States Supreme Court here ruled that addiction is a disease, whose proper cure is imprisonment in a mental hospital. [20] In his concurring opinion, Justice William O. Douglas asserted that "the addict is a sick person. He may, of course, be confined for treatment or for the protection of society. Cruel and unusual punishment results not from confinement, but from convicting the addict of a crime. . . . A prosecution for addiction, with its resulting stigma and irreparable damage to the good name of the accused, cannot be justified as a means of protecting society where a civil commitment would do as well. . . . If addicts can be punished for their addiction then the insane can also be punished for their insanity. Each has a disease and each must be treated as a sick person." [21]

Evidently neither Justice Douglas nor the ACLU is willing to consider the possibility that neither the "addict" nor the "insane" is sick, and

that—especially from the point of view of civil liberties—the best way to "treat" them would be by leaving them alone. Furthermore, neither Justice Douglas nor the ACLU is willing to face the inconsistency inherent in their prescription—namely, that if the addict and the insane are sick, then the proper remedy is to *offer* treatment to them, rather than to *impose* it on them. For surely Douglas and the ACLU must know, as nearly everyone knows, that persons with cancer and heart disease—and even with gonorrhea and syphilis!—cannot be forced to submit to treatment they do not want. How, then, does the mere *claim* of some "civil libertarians" that certain persons are sick justify their *further claim* that these persons should be detained against their will? and their *still further claim* that the persons so incarcerated should be forced to submit to interventions which they call treatments but which the "patients" call tortures?

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The sad tale of the ACLU's support of health, as defined by medical authorities and the society they serve—rather than its support of civil liberty, as defined by those deprived of it and by common sense—goes on and on and shows no signs of abating.

Summarizing the ACLU's stand on alcoholism, Markmann concludes, in 1965, as follows: "Having made an initial inroad on entrenched ignorance by the overthrow of the California law making narcotics addiction a crime [referring here to the *Robinson* decision], the Union, however belatedly, has begun a similar campaign against the parallel callousness that treats the alcoholic as the criminal he is not rather than as the sick man he is. . . . The Union will attempt to bring the law abreast of medicine and justice. Individual judges in considerable number have long recognized that alcoholism is a disease, but they have been hobbled not only by the prevailing lack of facilities for its treatment but particularly by the middle-class stupidity that keeps on the statute books laws that require men of good will on the bench either to violate their oaths by ignoring evidence or to behave, against all their principles, like Puritan witch-hunters." [21]

This, then, is some of the evidence that makes me conclude that the ACLU is actually an ideological, and perhaps in part also an economic, captive of the "liberal" medical-psychiatric establishment, rather than an independent defender of civil liberties. In other words, the ACLU is, in effect, a

lobby for the American Medical Association and the American Psychiatric Association: it is in the interests of these medical guilds that ever-more human conditions and problems be defined and treated as diseases—and it is this interest that the ACLU serves. As such a lobby, it is hardly surprising that the ACLU cannot recognize, much less fight, the enemies of civil liberties who wear not brown shirts but white coats—who are members not of the Ku Klux Klan, but of the American Psychoanalytic Association!

THE ALABAMA CASE

The latest incident in this brief account of the history of the betrayal of liberty for lunacy by the ACLU which I want to mention is a suit in which the ACLU and Dr. Menninger met in court.

In the fall of 1970, following the dismissal of a group of employees from an Alabama mental institution, the dismissed workers and the guardians of the patients sued the State, contending that the staff reduction made effective treatment impossible. This suit has become something of a *cause celebre* in legal-psychiatric circles, many civil libertarians celebrating, I think once again quite mistakenly, the court's support for their claim that hospitalized mental patients have a "right to treatment." I mention this case here, however, only because it brought together Dr. Karl Menninger and the ACLU in court—testifying against each other! This scene—and the boundless confusion and hypocrisy concerning psychiatry in the top echelons of the ACLU which it signifies—deserve, I think, more public exposure than they have received.

The case was tried in the Federal District Court in Montgomery, Alabama, in 1971. the ACLU Foundation was authorized by the Court to participate as *amicus curiae* to the same extent as the plaintiffs and defendants, and thus played a major role in all aspects of the case, including oral arguments. The State of Alabama, the defendant in the case, invited several experts to testify in its behalf, among them Dr. Karl Menninger. Although Menninger must have known that the ACLU was supporting the plaintiffs, he chose to testify for the defendants. Here is how his participation is described in *CIVIL LIBERTIES*, the official organ of the ACLU:

Menninger appeared as a witness for Alabama. 'I am very much in disagreement with computer medicine,' he announced. 'Boy scouts can give treatment.' Menninger claimed, 'Patients need love more than psychotherapy.' He said he would rather have 'more clergymen than psychiatrists and psychologists.' "

On cross-examination, Attorney Dean revealed that at the Menninger Clinic in Topeka, there is one psychiatrist for every eight patients. Menninger justified this by the difference in 'economic base', the difference in type of

patients and the difference in services offered. Nobody asked him why persons who are involuntarily incarcerated in state mental institutions should get less professional care than those who decide to pay their own way in private institutions.[22]

From the same report we learn that "The ACLU Board of Directors is still polishing its policy on mental commitments. However, most of the Union's leaders appear to agree on certain minimal standards: Involuntary commitment should be the last resort to which society turns in dealing with the mentally impaired. Before commitment there must be clear demonstration that the individual is a danger to himself or herself or to others. . . . And there must be assurance that the individual who is committed will, in fact, be treated adequately." [23]

In other words, while the victims of institutional psychiatry are perishing, the ACLU is "polishing." How reassuring. And how very reassuring that the ACLU no longer refers to mental *illness* or mental *patients*! But if there is no illness—and none is mentioned in the paragraph I here excerpted—then what is there to *treat*? And how much more reassuring still that the ACLU insists on "adequate treatment"—for *involuntary* patients! Would electroshock do? Or is that inadequate, and would nothing less than lobotomy satisfy the "minimal standards" of the ACLU?

I say: Enough! If the ACLU is *still* unprepared to defend the *civil liberties* of Americans accused of "mental illness," the least it could do is get out of the way—that is, stop justifying and supporting involuntary mental hospitalization—and let others, not so confused or corrupted or both, defend the victims. If it doesn't, then its acronym should be clearly understood to stand for the American Civil Lunacy Association—an association for the defense of lunacy, the privileged territory of the psychiatric mafia.

The masthead of the September 1972 issue of *CIVIL LIBERTIES*, from which I quoted above, perhaps explains further the ACLU's consistently confused position of psychiatric matters and its subtly hostile attitude towards the victims of institutional psychiatry. Among the officers of the ACLU listed on this masthead, the first is its Chairman of the Board of Directors; and the second is its Chairman of the National Advisory Council: Ramsey Clark.[24]

CREATIVE PARANOIA

Zola accused the General Staff of the French Army of deliberately incriminating an innocent Jew as a traitor. Dreyfus's enemies were, of course, in a bind: since they knew that Dreyfus was innocent, they could be fair to him only by admitting that they were guilty.

The same considerations hold for the American Civil Liberties Union's relationship to the involuntary mental patient. Since civil libertarians believe that, within the bounds of the criminal law, people should be legally free to behave as they like, the Union could be fair to the mental patient only by admitting that it has been wrong or wicked or both.

The moral is that the enemies of civil liberties are to the right—and yes, to the left, also—and above and below, and before and behind. They are everywhere.

Psychiatrists call such fear for liberty paranoia.

Those who love liberty call it eternal vigilance.

□



NOTES AND REFERENCES

- [1] George Orwell, "The Freedom of the Press," *THE NEW YORK TIMES MAGAZINE*, October 8, 1972, p. 76.
- [2] Charles L. Markmann, *THE NOBLEST CRY: A HISTORY OF THE AMERICAN CIVIL LIBERTIES UNION* (St. Martin's Press, 1965), pp. 400-401.
- [3] Karl Menninger, *THE VITAL BALANCE: THE LIFE PROCESS IN MENTAL HEALTH AND ILLNESS* (Viking, 1963), p. 32.
- [4] Karl Menninger, "Introduction," in *THE WOLFENDEN REPORT: REPORT OF THE COMMITTEE ON HOMOSEXUAL OFFENSES AND PROSTITUTION* (Stein & Day, 1964), p. 6.
- [5] Karl Menninger, *MAN AGAINST HIMSELF* (Harcourt, Brace, 1938), p. 69.
- [6] Karl Menninger, *THE CRIME OF PUNISHMENT* (Viking, 1968), p. 17.
- [7] *Ibid.*, p. 108.
- [8] *Ibid.*, p. 207.
- [9] *Ibid.*, pp. 260-61.
- [10] *Ibid.*, p. 265.
- [11] Phil Stanford, "A Model, Clockwork-Orange Prison," *THE NEW YORK TIMES MAGAZINE*, September 24, 1972, p. 71.
- [12] Ramsey Clark, *CRIME IN AMERICA: OBSERVATIONS ON ITS NATURE, CAUSES, PREVENTION, AND CONTROL* (Simon and Schuster, 1970; Pocket Books, 1971; page numbers refer to Pocket Books edition), p. 43.
- [13] *Ibid.*, pp. 75-6.
- [14] *Ibid.*, p. 199.
- [15] *Ibid.*, pp. 202-205.
- [16] *Ibid.*, p. 245.
- [17] *Ibid.*, p. 322.
- [18] Markmann, *op. cit.*, p. 348.
- [19] *Robinson v. California*, 370 U.S. 660, 1962.
- [20] *Ibid.*, p. 674.
- [21] Markmann, *op. cit.*, p. 406.
- [22] "The First Landmark: Mental Patients' Rights," *CIVIL LIBERTIES*, No. 289, September 1972, pp. 5-6.
- [23] *Ibid.*, p. 5.
- [24] *Ibid.*, p. 4.

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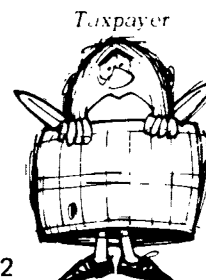
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